

In reply to the October 9, 2002 Restriction Requirement, restriction was required between Group I (claims 1-12, drawn to a sputter etching method) and Group II (claims 13-16, drawn to a sputtering apparatus).

Applicants hereby elect Group II, claims 13-16. This election is made with traverse for the following reasons:

Claim 17 is a linking claim and, therefore, must be examined with the elected claims. The elected claims are thus claims 13-17. Furthermore, if linking claim 17 is found allowable, then rejoinder of claims 1-12, drawn to the method, is required.

The Restriction Requirement asserts that Group I is related to Group II as a process and apparatus for its practice. Although Applicants agree that the inventions of Groups I and II may be independent or distinct as claimed, Applicants respectfully submit that the Restriction Requirement between Group I and Group II is improper and should be withdrawn.

According to MPEP §803, there are two requirements that must be met before a proper Restriction Requirement may be made. These two requirements are: "Inventions must be independent...or distinct as claimed; and there must be a serious burden on the Examiner if restriction is not required..." (emphasis added). Applicants respectfully submit that the Office Action has failed to establish the second requirement as set forth in MPEP §803, that a serious burden exists on the Examiner if restriction is not required between the Groups I and II.

In the present application, Applicants respectfully submit that a proper search of the claims of Group I would require a search of the claims of Group II, since references drawn to the method of Group I would be expected to describe the apparatus of Group II. Accordingly, a search and examination of the subject matter of Group I would encompass a search for subject matter of Group II, and any additional search would not impose a serious burden upon the Examiner.

It is therefore respectfully asserted that the search and examination of the entire application could be made without serious burden. MPEP §803 states that "if the search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits even though it includes claims to distinct or independent inventions" (emphasis added). Because Applicants have elected Group I directed to a method for element analysis of a metal sample, the further search and examination of Group II directed to an apparatus for the practice of the method, would not place a serious burden upon the Examiner.

For at least these reasons, and in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office, it is respectfully requested that the Restriction Requirement be reconsidered and withdrawn.

Should the Examiner have any questions regarding this response or the application in general, he is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,



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